IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8357 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGESH V BRAHMBHATT

Versus

STATE OF GUJARAT

Appearance:
MR VM TRIVEDI for Petitioners
Ms Manisha Lavkaumar, AGP for Respondent No. 1
MR BHUSHAN B OZA for Respondent No. 6, 7

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE C.K.THAKKAR

Date of decision: 10 /04/2000

CAV JUDGEMENT

Per Thakker, J:

Two practising advocates have approached this Court by way of Public Interest Litigation (`PIL') on the basis of a newspaper report appeared in the Times of India (daily) dated October 14, 1999 wherein it was inter alia stated that a female leopard was nabbed from village Vankuva near Asha Forest in Vadodara district. On 20th October, 1999 , in Gujarati vernacular newspaper `Gujarat Samachar', it was further reported that a female leopard had refused to take food and was starving on account of harassment, torture and trauma inflicted upon her.

It was the case of the petitioners that on coming to know about the aforesaid news, both of them went to Indroda Park, Gandhinagar on the same day where the female leopard was kept and found that she was left isolated in a cage without any attention or medical treatment. At about 3 p.m. both the petitioners went to Vankuva to collect necessary facts pertaining to capturing of the animal and they found that capturing effected was totally illegal,unlawful, unethical and unjustified.

On the next day i.e. on 21st October 1999, the petitioners attempted to contact Mr. G.A.Patel, Chief Wild Life Warden but he was not available at the station. Petitioner No.2, therefore, contacted Mr. Pathak, a subordinate to Mr. Patel who informed petitioner No.2 that the animal was not likely to survive more. The petitioners, therefore, immediately approached this Court by filing a petition on 22nd October, 1999. Notice was issued on the same day and was made returnable on October 26, 1999. The female leopard,however, subsequently died. Petition was permitted to be amended in view of specific allegations that the wild animal died due to negligence and ill-treatment by the forest authorities. It was also alleged that when the female leopard was captured, she was healthy. Treatment report, dated October 18, 1999 revealed that majority of nails of the leopard were removed. It was stated that nails of wild cat, whether it is leopard, tiger or lion, are imbedded in the bone structure of paw and ordinarily, they cannot be removed. It was, therefore, alleged that physical violence must have been caused to her for removing nails and appropriate proceedings were required to be taken against erring officers.

In the light of the above allegations, direction was issued to the authorities to file affidavit and accordingly, affidavits in reply are filed by Mr. N.L.Desai, District Forest Officer, Chhota Udepur on 26th November, 1999 as also by Mr. V.K.Saxena, Assistant

Conservator of Forests, Chhota Udepur on 5th February, 2000.

Rule. We have heard Mr. V.M.Trivedi, petitioner No.2 -party in person, a practising advocate of this Court and Ms Manisha Lavkumar, AGP for the respondent authorities. We have also heard Mr. B.B.Oza for respondents Nos. 6 and 7 (Applicants in CA No.12859 of 1999 who were permitted to be joined as parties). We have gone through the petition, CA No. 13968 of 1999, affidavits in reply as well as affidavit in rejoinder.

In the counter affidavits, it was denied that female leopard was captured with a view to harass her or in bad faith. It was the case of the respondents that action was taken in good faith. It was stated that on 30th September, 1999/ 1st October, 1999, applications were received from Sarpanchs of Ghodadara Group Gram Panchayat and Vasvel Group Gram Panchayat requesting the Range Forest Officer, Vadodara to capture 2-3 leopards who were killing animals. Similar application was made by several persons complaining that leopards were causing damage to the people of villages by killing cattles. Considering the representations and requests of Sarpanchas and village people, a cage was kept on 3rd October, 1999 to capture leopards. At the same time,however, care was taken to ensure that village people may not cause injury to wild animals. On 11th October, 1999 at about 4 p.m. a female leopard was captured in the cage and she was shifted to a safer place . On the next day, i.e. on 12th October, 1999, she was taken to Harni. The leopard had self inflicted injuries and veterinary doctor from Kareli Bag, Vadodara was called and treatment was given to her. The female leopard could not be released in forest due to injuries on her body. On 13th October, 1999, a written application was made to the Deputy Director of Poly Clinic and the Deputy Director himself gave treatment to the leopard. It was further stated that on 15th October, 1999, after consultation with the Chief Conservator of Forests, Gandhinagar, the Divisional Forest Officer, Chhota Udepur shifted the leopard to Indroda Nature Park at Gandhinagar for further treatment. Even in Indroda Park, continuous treatment was given to her by veterinary doctor Mr. Gajera. On 18th October, 1999, veterinary doctor Mr. Bhuva was called from Sakkar Bag Zoo, Junagadh who treated her after making the female leopard unconscious. But from the blood test report, it was found that she had bacterial infection inside the body. It was also revealed that haemoglobin was very low. Upto 19th October, 1999, Dr. Bhuva carried out the treatment at Gandhinagar and thereafter the leopard was

shifted for further treatment to `B' Animal House. On the same day, doctor from Kankaria Zoo, Ahmedabad was consulted who gave treatment upto 21st October, 1999. Since the condition of the leopard was not improved, it was decided to shift her to Sakkar Bag Zoo, Junagdh , but she could not be taken as she was very weak and again Dr. Bhuva was called from Junagadh. In spite of best efforts, on 21st October, 1999, the leopard died. On the same day, veterinary doctor performed post mortem wherein it was specifically mentioned that the female leopard died due to high infection.

It was denied that female leopard was pregnant when she was captured. From the post mortem notes also, she was not found to be pregnant. It was stated that it was never the intention of the officers to cause injury to the wild animal and she was captured because of the fear of the village people and pursuant to complaints made that leopards were killing their cattles. The female leopard was treated by several doctors and there was no negligence or carelessness on the part of the officers.

In the affidavit in reply of Mr. Saxena, it was denied that nails were removed before female leopard died. It was categorically stated that prior to death of the female leopard, nails were not removed. Even after the death of the leopard, veterinary officer of Sakkar Bag Zoo, Junagadh opined that it was not advisable to remove the skin of the animal as she died of bacterial infection and hence, the animal was buried with skin in the presence of the authority. A report was made to that effect to Mr. Singh, Director , Gujarat Ecological Education and Research Foundation (Gir Foundation) , Indroda Park, Gandhinagar. It was then stated that nails were removed after death of the leopard and at present, they are in safe custody of the Director, Gujarat Ecological Education and Research Foundation.

In the affidavit in rejoinder, the assertions made in the affidavits in reply were controverted.

From the above facts and circumstances, it appears to us that the female leopard was captured by the authorities pursuant to applications made by Sarpanchs as well as village people. Our attention was invited by the petitioners to various provisions of Wild Life (Protection) Act, 1972 (hereinafter referred to as `the Act') and particularly to Section 11 which prohibits hunting of wild animals specified in Schedule I. The said section starts with non-obstante clause and enacts that "Notwithstanding anything contained in any other law

for the time being in force and subject to the provisions of Chapter IV" which provides for Sanctuaries, National Parks and Forest Areas, no wild animal can be hunted, captured ,killed etc. It states that hunting of such wild animals can be permitted only by Chief Wild Life Warden, if he is satisfied that such wild animal "has become dangerous to human life" or "is so disabled or diseased as to be beyond recovery". In either of the two eventualities, the Chief Wild life Warden may pass an order in writing and stating reasons therefor,and permit any person to hunt such animal or cause such animal to be hunted.

Section 11 reads thus:

"(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV-

(a) the Chief Wild Life Warden may, if he is satisfied that any wild animal specified in Schedule I has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted.

(b) the Chief Wild Life Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II , Schedule III or Schedule IV, has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause such animal to be hunted.

(2) The killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence:

Provided that nothing in this sub section shall exonerate any person who,when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

(3) Any wild animal killed or wounded in defence of any person shall be Government

property."

It is not in dispute that the female leopard captured by the authorities in the instant case falls under Schedule I. It is,therefore, beyond doubt that the animal could not have been captured except in accordance with the order passed by the Chief Wild Life Warden in writing stating reasons therefor that the wild animal "had become dangerous to human life" or was "disabled or diseased as to be beyond recovery." It is not even the case of the authorities that the order was passed by the Chief Wild Life Warden. It is also not their case that the leopard had become dangerous to human life or was disabled or diseased as to be beyond recovery. Even according to the authorities, action was taken in good faith in view of applications made by village panchayats as well as village people that 2-3 leopards were causing damage and destruction to cattles of village people.

From the record and affidavits, however, we are satisfied that there was no bad faith or mala fide intention on the part of the authorities in capturing the female leopard. It is also clear that after the leopard was captured , due to self inflicted injuries, she was medically treated. It is also on record that veterinary doctors and experts were called and they tried their best to save the animal, but in spite of best efforts , due to bacterial infection and falling of haemoglobin , unfortunately, the leopard breathed her last. It was also stated that nails were not removed before death of female leopard but after the death, they were removed and at present, nails are kept with the Director of Ecological Education at Gandhinagar. It, therefore, cannot be said that female leopard was killed with a view to remove nails. Bald allegations made in the petition, hence, are not believable and cannot be accepted.

At the same time, however, with a view to ensure that in future, the provisions of the Act are observed in letter and spirit and no animal specified in Schedule I is captured except in accordance with law, we consider it appropriate to issue certain directions to the authorities which they shall strictly observe whenever such occasion arises;

In the facts and circumstances, we issue the following directions:

(1) No wild animal specified in Schedule I of

the Wild Life (Protection) Act, 1972 shall be hunted or cause to be hunted unless such wild animal has become "dangerous to human life" or is "so disabled or diseased as to be beyond recovery"' (Section 11);

(2) An order of hunting of such wild animal shall only be passed by the Chief Wild Life Warden in writing and stating reasons therefor;

(3) The Chief Wild Life Warden shall issue a circular to all subordinate officers throughout the State prohibiting hunting of any animal specified in Schedule I without prior permission in writing by the Chief Wild Life Warden;

(4) In case of hunting in accordance with Section 11 of the Act, as far as practicable, the Chief Wild Life Warden shall ensure presence of a veterinary doctor along with a team of executing officers so as to prevent injuries to such animal, self inflicted or otherwise;

(5) If an order is passed in respect of disabled or diseased wild animal, such animal shall be released in the forest immediately after recovery or removal of disability, as the case may be;

(6) The Chief Wild Life Warden shall direct the executing officers to prevent villagers and curious bystanders from provoking and/or harassing such wild animal in any manner whatsoever;

(7) The State authorities shall take appropriate steps to train sufficient number of veterinary doctors for giving treatment to disabled or diseased wild animals specified in Schedule I such as lion, leopard, wild ass,etc.

(8) The State Authorities shall organize awareness programmes by imparting education to villagers and people living in and around forest areas and by making them aware to promote harmony between human being and nature in such forest areas;

The petition is accordingly disposed of. Rule is made absolute to the aforesaid extent. In the facts and circumstances, there shall be no order as to costs.

--
parekh